91-1668

(1)

Supreme Court, U.S.
FILED
APR 6 1992
OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

LOUIS A. LaRAIA,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA

Allen N. Brunwasser
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QUESTIONS PRESENTED FOR REVIEW

I. IF THE UNITED STATES SUPREME COURT GRANTS CERTIORARI AND REMANDS TO THE STATE COURT WITH DIRECTIONS TO REEVALUATE ITS PRIOR DECISION ON A SPECIFIED ISSUE, DOES IT INTEND THIS ORDER TO BE OBEYED?

II. IF THE ANSWER TO THE ABOVE QUESTION IS "YES," SHOULD THE STATE COURT BE PERMITTED TO DISOBEY THIS ORDER BY INCORRECTLY CLAIMING THE ISSUE WAS WAIVED WHEN THE RECORD CLEARLY SHOWS IT WAS RAISED AT EVERY PROPER STAGE IN THE STATE COURT AND ACTUALLY DISCUSSED AND REJECTED IN A WRITTEN OPINION FILED IN THE CASE BY THE STATE COURT WHICH CLAIMS IT WAS WAIVED?

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REFERENCE TO THE OFFICIAL
AND UNOFFICIAL REPORTS

On April 22, 1991, at No. 90-213, published in ___ US ___, 111 S.Ct. 1614, the United States Supreme Court granted certiorari and remanded to the Superior Court of Pennsylvania "for further consideration in light of Powers v. Ohio, 499 US ___, 111 S.Ct. 1364, ___ L. Ed.2d ___ (1991)"

On May 24, 1991, the Superior Court refused to reconsider in a memorandum opinion. A note of this decision, which is non precedential (Com. v. Marconi, 1989, ___ Pa. super ___, 567 A.2d 628, 630; Reed v. Reed, 1985, ___ Pa. super ___, 493 A.2d 710, 712, N.2) and whose opinion is not published appears at 596 A.2d 252, ___ Pa. super ___, with an additional Footnote 3 advising that reargument was denied on August 2, 1991.

On January 8, 1992, the Supreme Court of Pennsylvania denied discretionary review without opinion. This order has not yet been published.

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STATEMENT OF JURISDICTION

Jurisdiction is founded upon 28 USC 1257(3).

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CONSTITUTIONAL PROVISIONS INVOLVED

Article Six, Clause 2

"The Constitution - shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

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CONCISE STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

On April 22, 1991 at No. 90-213, this nation's highest court vacated the decision of the Superior Court of Pennsylvania. Its order said: "April 22, 1991. On Petition for Writ of Certiorari to the Superior Court of Pennsylvania, Pittsburgh Office, the Petition for Writ of Certiorari is granted. The judgment is vacated and the case is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for consideration in light of Powers v. Ohio, 499 US ___, 111 S.Ct. 1364, ___ L. Ed.2d ___ (1991)."

On May 23, 1991, Theresa A. Haslip, Assistant Clerk, mailed the mandate to the Clerk of the Superior Court of Pennsylvania, Pittsburgh Office, and both counsel. It also directed Respondent pay

the $300 docket fee. This fee has not yet been paid by Respondent.

The mandate directed, inter alia: "NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in said cause, in conformity with the judgment of this court above stated, as accord with right and justice, and the Constitution and laws of the United States."

The said mandate also advised of the April 22, 1991 order and said that it had directed " - the judgment of the above court in this cause was vacated with costs, and this cause is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for further consideration in light of Powers v. Ohio, 499 US ___ (1991)."

On May 23, 1990, the Superior Court of Pennsylvania, speaking through a two judge

panel composed of Judge Justin M. Johnson and Senior Judge John G. Brosky, refused to obey the mandate because Petitioner had waived the issue the United States Supreme Court wanted reevaluated. Judge Melinson, an appointed judge who had sat on the original panel which made the vacated order, did not participate as he had been defeated in the November 1991 state election. The May 24, 1991 opinion has been printed in this Petition's Appendix (3a to 15a).

The May 24, 1991 opinion concluded (Pages 6-7, 12a to 14a) Petitioner's failure to make a previous to certiorari sufficient record was a waiver of his right to have the Powers issue decided by the Superior Court.

It found Petitioner had not furnished either a trial or voir dire transcript

(Page 6, 12a) and "failed to include any information in the record that would inform us of the composition of the venire panel, how many blacks were on the panel, how many blacks were struck, the ages and occupations of the members of the petit jury, the ages and occupations of white jurors who were struck by the Commonwealth peremptory challenges, etc." (Pages 6-7, 13a to 14a)

It then concluded (Page 7, 14a) "since we are unable to determine what occurred at voir dire, we find Appellant's claim, i.e., that he is entitled to a new trial since the Commonwealth improperly used peremptory challenges from the jury panel to be waived."

On June 4, 1991, Petitioner filed a Motion for Reargument (16a to 33a). This motion said Petitioner had done exactly

what the May 24, 1991 memorandum opinion said he had not done and gave the specifics plus the exact place in the record where it had been done.

On July 1, 1991, Petitioner filed a Motion to Amend the Motion for Reargument (34a to 61a). This motion was even more specific, cited case law and detailed (Paragraph 10, 37a to 41a) how the trial assistant district attorney had to see the two black jurors, as he looked at them before and during the voir dire. He then argued the trial prosecutor (Paragraph 11, 41a) had to know the two blacks he rejected were there, that as a result the trial judge could not rightly find he did not look and asked for an evidentiary hearing to prove it, and filed an affidavit (42a).

The already appendixed voir dire transcript (43a to 61a), after Petitioner was unable to obtain a court reporter, clearly discloses the trial prosecutor directly conducted the voir dire (57a to 61a), and in particular 263a-266a of the trial record.

On July 15, 1991, Petitioner filed a second motion to amend (62a to 69a). This motion pointed out that the issue the panel said could not be addressed had been presented and rejected in the December 22, 1988 opinion.

On July 19, 1991, Petitioner filed a letter (70a) which brought two additional decisions of this court to the panel's attention.

On August 2, 1991, reargument was denied by an order which said, "The court hereby denies the application filed June

4, 1991, requesting reargument or reconsideration of the decision dated May 24, 1991. All other motions are denied."

On September 3, 1991, Petitioner filed a petition for allowance of Pennsylvania Supreme Court discretionary appeal. It was denied by an unsigned, handwritten note on its cover sheet, which merely said, "Petition denied per curiam 1/8/92." The Petition included everything filed in the Superior Court of Pennsylvania plus what was required by the rules to process the said Supreme Court of Pennsylvania petition.

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REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI

I. IF THE UNITED STATES SUPREME COURT GRANTS CERTIORARI AND REMANDS TO THE STATE COURT WITH DIRECTIONS TO REEVALUATE ITS PRIOR DECISION ON A SPECIFIED ISSUE, DOES IT INTEND THIS ORDER TO BE OBEYED?

II. IF THE ANSWER TO THE ABOVE QUESTION IS "YES," SHOULD THE STATE COURT BE PERMITTED TO DISOBEY THIS ORDER BY INCORRECTLY CLAIMING THE ISSUE WAS WAIVED WHEN THE RECORD CLEARLY SHOWS IT WAS RAISED AT EVERY PROPER STAGE IN THE STATE COURT AND ACTUALLY DISCUSSED AND REJECTED IN A WRITTEN OPINION FILED IN THE CASE BY THE STATE COURT WHICH CLAIMS IT WAS WAIVED?

A reported United States decision is the law of the land and State judges are required to enforce it just as though enacted by their own legislature. Howlett, a minor, by Howlett v. Rose, 1990, ___ US ___, 110 S.Ct. 2430, 2443-2444, a unanimous decision. ("The federal law is state law in the state as much as laws passed by the state legislature." Enforcement cannot be refused "because of conceptions of impolicy or want of wisdom -" or to "relieve congestion" in the state courts.)

"No state -- judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 1958, an unanimous decision, 358 US 1, 17-18, 78 S.Ct. 1401, 1409-1410.

The United States Supreme Court has advised it will enforce its decisions, General Atomic Co. v. Felter, 1978, 436 US 493, 497, 98 S.Ct. 1939, 1941; In Re Sanford Fork and Tool Co., 1895, 160 US 247, 256, 16 S.Ct. 291, 293, no matter how many times the state court resists. Yates v. Evatt, 1991, ___ US ___, 111 S.Ct. 1884, 1890-1891 (three certioraris necessary).

The Superior Court of Pennsylvania has long ago recognized its duty not to overrule the United States Supreme Court

in Com. ex. rel. Gryger v. Burke, 1953, 173 Pa. super 458, 98 A.2d 380, 385.

The United States Supreme Court has expanded Powers, which it applied to Petitioner's criminal case, to civil cases as well. Edmonson v. Leesville Concrete Co., Inc., 1991, ___ US ___, 111 S.Ct. 2077, 2081, because of the impact on fair trials, judicial integrity and "dignity of the person excluded" (111 S.Ct. at 2087) and allows the affected juror or the objecting party on the juror's behalf to sue for damages.

Petitioner respectfully asks this highest court to conclude that the reasons given by the Pennsylvania Superior Court in concluding he has not presented a sufficient record and thus has waived the Powers issue is contrary to the record and, even if it was not, the requested

evidentiary hearing should have been allowed to supply what the court found necessary for it to make a learned decision, i.e., the Superior Court at the least should have remanded to the trial court with directions it hold a hearing to supply what the record lacked. When the trial court summarily rejected the black juror issue because Petitioner was white, it foreclosed the testimonial hearing that would have followed if it had accepted the issue (Opinion, N.4, Pages 4-5, 10a).

He also respectfully suggests that the state court is determined not to reopen his case and thus respectfully urges this court to end the matter by reversing his sentence. Henry v. City of Rock Hill, 1964, 376 US 776, 778, 84 S.Ct. 1042, 1043.

If this Court declines, it is respect-

fully urged to order the Superior Court of Pennsylvania to obey its April 22, 1991 order and mandate and to take all steps required to resolve it, including the requested evidentiary hearing (Motion to Amend, Paragraph 6, Page 2, 37a; Paragraph 10D, Page 4, 40a).

----------*----------

CONCLUSION

The April 22, 1991 order should be enforced. The sentence should be vacated here. If this highest court declines, the case should again be remanded with directions that the jury selection issue has not been waived and the case be reevaluated by application of Powers v. Ohio, 1991, 111 S.Ct. 1364 and Edmonson, supra.

Petitioner respectfully suggests that

if the orders of this court can be avoided as has been done here, the end result of successful judicial appeal becomes "a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." Edwards v. California, 1941, 314 US 160, 186, 62 S.Ct. 164, 172 (Mr. Justice Jackson concurring.)

Respectfully submitted,

Allen N. Brunwasser

ALLEN N. BRUNWASSER
Attorney for Petitioner

APPENDIX

Superior Court of Pennsylvania
Order and Opinion . . . . . App. 1

Motion for Reargument Filed
in Superior Court of Pennsylvania. App. 15

Motion to Amend . . . . . App. 33

Second Motion to Amend . . . . . App. 61

Letter to Panel . . . . . App. 69

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App. 1

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

Commonwealth of Pennsylvania	:	
	:	No. 1480
v	:	Pittsburgh
	:	1987
Louis A. LaRaia, Appellant	:	

ORDER

AND NOW, this 24th day of May, 1991, it is ordered as follows:

_____ Order affirmed.

_____ Order reversed.

_____ Judgment affirmed.

__X__ Judgment of Sentence affirmed.

_____ Judgment of Sentence reversed.

_____ Order vacated and lower court directed to proceed in accordance with opinion filed herewith.

_____ Order modified as set forth in opinion filed herewith.

_____ Costs to be taxed as provided by Chapter 27 of the Pa.R.A.P.

_____ Costs to be taxed as provided in opinion filed herewith.

_____ Appeal quashed.

BY THE COURT

Eleanor R. Valecko
DEPUTY PROTHONOTARY

IN THE SUPERIOR COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	No. 1480
v	:	Pittsburgh
	:	1987
Louis A. LaRaia, Appellant	:	

Appeal from the Judgment of Sentence of the Court of Common Pleas, Beaver County, Criminal Division, at No. 599 of 1986

BEFORE: JOHNSON, BROSKY AND MELINSON,[1]*JJ.

MEMORANDUM:

Louis LaRaia was convicted on January 13, 1987, by a Beaver jury, of cruelty to animals.[1] He appealed to this Court on October 29, 1987. On December 22, 1988, a panel of this Court, consisting of Judges Brosky, Johnson and Melinson, affirmed appellant's judgment of sentence in a memorandum opinion.

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*Melinson, J. not being a member of this court at the time case was remanded by the United States Supreme Court did not participate in the decision of this case.

[1]18 Pa.C.S. 5511(a).

Commonwealth v. LaRaia, 387 Pa. Super 649, 559 A.2d 963 (1989). Appellant's petition for reargument was denied on February 23, 1989. On March 27, 1989 he filed a petition for allocatur to the Pennsylvania Supreme Court; said petition was denied on March 19, 1990. Commonwealth v. LaRaia, ___ Pa. Super. ___, 575 A.2d 563 (1990). Appellant then filed a petition for a writ of certiorari to the United States Supreme Court. He raised three issues in the petition: One involved whether a white defendant's sentence must be vacated when a prosecutor removes all blacks from the jury panel; the other two issues involved appellant's sentence and an alleged improper communication between the President Judge of the Beaver County Common Pleas Court and the Pennsylvania Supreme Court. On April 22, 1991, our Court's Prothonotary (Pittsburgh Office)

received the following letter from the United States Supreme Court, Office of the Clerk:

> The [United States Supreme] Court today entered the following order in the above entitled case: [2]
>
> The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for further consideration in light of Powers v. Ohio, 499 U.S. ___ (1991). [Decided April 1, 1991.]

Powers v. Ohio, 499 U.S. ___ (1991), addressed the issue of whether, based upon the Equal Protection Clause of the United States Constitution, a white defendant may object to the prosecution's peremptory challenges of black venirepersons. The Supreme Court[3] reversed the judgment of

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[2]The case referred to is the instant case.

[3]This and all future references in this memorandum are to the United States Supreme Court.

sentence of Larry Joe Powers and remanded the case to the Court of Appeals of Ohio. The Supreme Court stated,

> [Racial discrimination in the qualification or selection of jurors offends the dignity of persons and the integrity of the courts.... The Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race, or on the false assumption that members of his race as a group are not qualified to serve as jurors. [Batson v. Kentucky, 476 U.S. 79 (1986).] Although a defendant has no right to a petit jury composed in whole or in part of persons of the defendant's own race, he or she does have the right to be tried by a jury whose members are selected by nondiscriminatory criteria.... While States may prescribe relevant qualifications for their jurors, a member of the community may not be excluded from jury service on account of his or her race.... In Batson we held that a defendant can raise an equal protection challenge to the use of peremptories at his own trial by showing that the prosecutor used them for the purpose of excluding members of the defendant's race.... In Batson, we spoke of the harm caused when a defendant is tried by a tribunal from which members of his own race have been excluded. But we did not

limit our decision in Batson to that one aspect of the harm caused by the violation. Batson was designed to serve multiple ends, only one of which was to protect individual defendants from discrimination in the selection of jurors. Batson recognized that a prosecutor's discriminatory use of peremptory challenges harms the excluded jurors and the community at large [since] the opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system.... We hold that the Equal Protection Clause prohibits a prosecutor from using the State's peremptory challenges to exclude otherwise qualified and unbiased persons from the petit jury solely by reason of their race, a practice that forecloses a significant opportunity to participate in civic life.

[A] criminal defendant has standing to raise the equal protection rights of a juror excluded from service in violation of these principles.... The discriminatory use of peremptory challenges by the prosecution causes a criminal defendant cognizable injury, and the defendant has a concrete interest in challenging the practice [since] racial discrimination in the selection of

> jurors casts doubt on the integrity of the judicial process.
>
> The emphasis in Batson on racial identity between the defendant and the excused prospective juror is not inconsistent with our holding today that race is irrelevant to a defendant's standing to object to the discriminatory use of peremptory challenges. Racial identity between the defendant and the excused person might in some cases be the explanation for the prosecution's adoption of the forbidden stereotype, and if the alleged race bias takes this form, it may provide one of the easier cases to establish both a prima facie case and a conclusive showing that wrongful discrimination has occurred. But to say that the race of the defendant may be relevant to discerning bias in some cases does not mean that it will be a factor in others, for race prejudice stems from various causes and may manifest itself in different forms.

Id. at ___.

In the instant case appellant is white and the prosecution did use two of its peremptory challenges to exclude black jurors. As mentioned, supra, the Supreme Court has vacated our Court's affirmance of appellant's judgment of sentence. The

Supreme Court did so pursuant to Powers v. Ohio, supra, which focused exclusively on the right of a white criminal defendant to object to the prosecution's peremptory challenges of black venirepersons.

Pursuant to the Supreme Court's Order, this memorandum will only address appellant's claim that he is entitled to a new trial since the Commonwealth improperly used peremptory challenges to remove two black venirepersons from the jury panel.[4]

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[4]We assume that the Supreme Court directed this Court to reconsider this issue since the trial court responded to appellant's claim by stating that,

> "[W]e believe that the defendant's objection is that he was deprived of a cross section of the community because of racial discrimination. This is absurd. The defendant himself is white. Therefore, the prosecutor did not exercise peremptory challenges to remove venire members of the defendant's race."

Trial Court Opinion, 7/6/87, at 3. The trial court also added that, "[T]he prosecutor did not even realize he had removed black venire members as he did not look at the panel while exercising peremptory challenges. He only looked at the book [the papers containing information regarding the age, occupation, etc. of the venirepersons]." Id. at 4.

The Supreme Court did not refer to either of appellant's other two claims that were raised in his petition. All of the other claims that appellant raised in his October 29, 1987 appeal to this court are affirmed.

Peremptory challenges are utilized to permit parties to strike prospective jurors who they have good reason to believe might be biased. Commonwealth v. Jackson, ___ Pa. Super. ___, 562 A.2d 338 (1989), allocatur denied at 578 A.2d 926. Prior to Powers v. Ohio, supra, in order to prevail on his claim, appellant had to establish three elements of a prima facia case of discrimination. Id.

> [A] prima facie case of discrimination has three elements: (1) the defendant's membership in a cognizable racial group; (2) the prosecutor's use of peremptory strikes to exclude members of that group; and (3) an inference arising under the totality of the circumstances that the prosecutor used the strikes to

> exclude venirepersons on account of race.
>
> If a defendant makes a prima facie showing of discrimination, the burden then shifts to the prosecution to justify his decision to strike minority jurors. The prosecutor must therefore articulate a neutral explanation related to the particular case to be tried. The trial judge must then make the ultimate determination of whether the defendant has established purposeful discrimination. [Citations omitted.]

Commonwealth v. Jackson, supra at ___, 562 A.2d at 343-44.

Pursuant to Powers v. Ohio, supra, we are no longer compelled to determine if the defendant is a member of the racial group whose members were eliminated from jury service by peremptory strikes. In the instant case we must first look to see if appellant has established a prima facie case of discrimination.

The record is wholly devoid of any criteria with which to make a determina-

tion of whether appellant has established a prima facie case. Appellant has failed to provide this court with a trial transcript. An appellant is required to order any transcript which shall constitute the record on appeal to this court. Commonwealth v. Lowry, 385 Pa. Super. 236, 560 A.2d 781 (1989); Pa.R.A.P. 1911(a). Material which is not contained in the record cannot be considered by this court in its review of issues. Commonwealth v. Lowry, supra. An appellant shoulders the burden of producing a record sufficient to enable this Court to conduct a meaningful review. Thomas v. Duquesne Light Co., 376 Pa. Super. 1, 545 A.2d 289 (1988), appeal granted, 563 A.2d 498 (1989). Furthermore, appellant failed to include any information in the record that would inform us of the composition of the venire panel, how many blacks were on

the panel, how many blacks were struck, the ages and occupations of the members of the petit jury, the ages and occupations of white jurors who were struck by Commonwealth peremptory challenges, etc.[5] Since we are unable to determine what occurred at voir dire we find appellant's claim, i.e. that he is entitled to a new

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[5]Our review of the briefs and reproduced record simply reveals that two black women were struck by Commonwealth peremptory challenges. The reproduced record, which was supplied to this Court by appellant and which is a copy of the trial transcript, indicates that the Commonwealth stated that the two venirepersons were struck because of their age and the fact that they were housewives. The Commonwealth also alleged that it struck the jurors without even determining that they were black (this was allegedly accomplished by looking at written information provided regarding the venirepersons as opposed to looking at the venireperson). The reproduced record simply informs us that two blacks were struck and that there were no blacks on the jury. Even if we were permitted to consider the reproduced record we would have found that, on account of the sketchy information provided by appellant, that he did not present an inference arising under the totality of the circumstances that the prosecutor used the strikes to exclude venirepersons on account of race. Commonwealth v. Jackson, supra.

trial since the Commonwealth improperly used peremptory challenges to remove two black venirepersons from the jury panel, to be waived. Commonwealth v. Lowry, supra; Pa.R.A.P. 1911(a); Thomas v. Duquesne Light Co., supra.

Judgment of sentence affirmed.

MELINSON, J. not being a member of this court at the time case was remanded by the United States Supreme Court did not participate in the decision of this case.

IN THE SUPERIOR COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	RECEIVED
	:	JUN 4,
v	:	1991
	:	
Louis A. LaRaia, Appellant	:	No. 1480
	:	Pittsburgh
	:	1987
	:	
	:	Superior
	:	Court
	:	Pittsburgh
	:	Office

MOTION FOR REARGUMENT EN BANC
AND FOR PANEL RECONSIDERATION

From the order of 5-24-91 entered by Johnson and Brosky, J.J. in defiance of the order of The Supreme Court of the United States entered 4-22-91 at No. 90-213 and its 5-23-91 Mandate and finding as undone what the record and briefs filed in The Superior Court of Pennsylvania and The Supreme Court of Pennsylvania at No. 168 W.D. Allocator 1989 clearly show what was done. Appeal from the 9-16-87 judgment of sentence as amended 10-7-87 in the Beaver

County Criminal Division of Common Pleas Court at No. 599 of 1986.

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Certification of Service

On the 4th day of June, 1991, copy hand delivered to Office of District Attorney.

Allen N. Brunwasser

MOTION FOR REARGUMENT EN BANC AND PANEL RECONSIDERATION

TO THE HONORABLE, THE PRESIDENT JUDGE AND THE ASSOCIATE JUDGES OF THE SUPERIOR COURT OF PENNSYLVANIA

Louis A. LaRaia respectfully avers:

1. On 4-22-91, the Supreme Court of the United States issued the attached order.

2. On 5-23-91, the Supreme Court of the United States issued its attached mandate restoring Jurisdiction to the Superior Court of Pennsylvania and assessing costs against Appellee.

3. Appellant's counsel did not receive the attached mandate until Tuesday, 5-28-91 and assumes the Panel Judges in Pittsburgh, Johnson and Brosky, did not receive it any sooner.

4. The mandate directs, inter alia, "NOW, THEREFORE, THE CAUSE IS REMANDED to

you in order that such proceedings may be had in said cause, in conformity with the judgment of this court above stated, as accord with right and justice, and the Constitution and Laws of the United States."

5. In direct defiance of the said attached 4-22-91 order and 5-23-91 mandate, Judges Johnson and Brosky on 5-24-91, by the attached order and opinion did not do what they were ordered to do but repeated their 12-22-88 decision.

A. They said (pages 6-7) that appellant had not ordered or printed the relevant transcript, failed to print Jury information sheets and did not present the issue to them and had thus waived the issue.

B. No previous notice was given to appellant of the panel's intent to act

sua sponte or to deny oral argument and/or additional briefing.

C. The record and the Briefs and Petitions clearly disclose that appellant has done exactly what the panel says he has not done.

6. The Jury selection issue is argued beginning at page 84 of appellant's 1-19-88 Brief and the striking of the only two black jurors at pages 89-96 where specific reference to the printed record of what happened in the trial court is made.

A. The only transcript of this 1-12-87 and 1-13-87 event has been reproduced (268a-285a) even though the above 5-24-91 opinion says it has not been reproduced.

B. The jury information sheets have been reproduced (543a-560a) even though the panel 5-24-91 opinion says they were not.

C. The issue is argued (Brief 89-

96) and comparisons made between the two black jurors removed and the 100% whites who remained (90-94) but the 5-24-91, in direct contradiction of the record, says this was not done.

7. The issue was further preserved in appellant's 1-4-89 Motion for Reargument (pages 13-14) to which the 1-19-88 Brief with its above specifics was attached.

8. The issue was preserved in appellant's Petition for Allocatur filed in the Supreme Court of Pennsylvania at No. 168 W.D. Allocatur Docket 1989 where it was the first question presented (page 6 of the said Petition 1 and argues on pages 14-27 with the comparison of the two blacks struck and the 100% whites remaining specifically detailed at pages 20-27.)

9. Appellant also raised the issue of Judge Johnson's disqualification to sit in judgment (pages 14-15) and continues to

press it here.

A. In addition Judge Johnson's financial contribution to the election campaign of candidate Cynthia Baldwin raises questions of whether he should continue as a Judicial Officer.

B. Appellant respectfully requests the opportunity to make a record of this election bureau fact, acceptance of an Honorary Degree from a university and participation as a director in various money generating corporations etc. and to show why Judge Johnson should not sit in this case.

C. In sum, appellant objects to Judge Johnson's participation, past and present, in his case so only one member of the panel is left to obey or disobey the above attached United States Supreme Court Mandate.

10. The issue was preserved in the

U.S. Supreme Court as question #1 where specific reference was made to the Superior Court appendix 278a-285a and the above detailed Briefs and Petitions page 5, 8-10.

11. On pages 4-6, the District Attorney of Beaver County opposed certiorari in the U.S. Supreme Court and specifically argued the Black Juror removal issue.

A. He specifically refers to the District Attorney saying "He only looked at the book - not the faces which appellant respectfully suggests could not be credited by any Judge or practicing attorney.

B. He specifically argues the issue was waived at page 5, paragraph 3 of his answer and on page 6, paragraph 1 and 2.

12. However, the Supreme Court of the United States in the attached 4-22-91 order said it was not waived when it granted the Writ and vacated the sentence.

13. Appellant respectfully suggests when the U.S. Supreme Court remands to reconsider an issue, the remanded to court has no legal power to overrule the U.S. Supreme Court and find the issue which the highest court said exists does not exist.

SPECIFICATION OF POINTS OF LAW

OR FACT OVERLOOKED OR MISAPPREHENDED

1. The panel found the issue waived when the U.S. Supreme Court said it was not waived.

2. The panel found the transcript, Juror Question Forms were not in the record when they were and found appellant did not evaluate the Jury when he did.

3. Judge Johnson should have recused and should do so now.

REASONS FOR REARGUMENT

1. The Mandate directs Due Process and Justice be applied.

2. Due Process and Justice were not applied.

3. If the Superior Court Panel can do what they have done here, we mind as well close up shop on Orderly Procedural Appeal as it has been previously announced.

CONCLUSION

The 5-24-91 order should be vacated and a New Trial granted.

Respectfully Submitted,

Allen N. Brunwasser

Attorney for Appellant

"The May 24, 1991 order and opinion which was next in sequence has been, to follow U.S. Supreme Court rules, placed ahead and is now A1-A15".

App. 26

Louis A. LaRAIA, Petitioner

v.

PENNSYLVANIA

No. 90-213

Case below, 387 Pa.Super. 649, 559 A.2d 968; ___ PA ___, 575 A.2d 563

April 22, 1991. On petition for writ of certiorari to the Superior Court of Pennsylvania, Pittsburgh Office. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for further consideration in light of Powers v. Ohio, 499 U.S. ___, 111 S.Ct. 1364, ___ L.Ed.2d ___ (1991).

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter,
Clerk of the Court

Area Code 202
479-3011

May 23, 1991

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

Re: 90-213 - LaRaia, Louis
v. Pennsylvania

Dear Mr. Brunwasser:

A certified copy of the mandate of this Court in the above-entitled case was mailed today to the Clerk of the Superior Court of Pennsylvania, Pittsburgh Office.

The petitioner is given recovery for costs in this Court as follows:

Clerk's costs: $300.00

This amount may be collected through the Superior Court of Pennsylvania, Pittsburgh Office, or from opposing counsel or party.

Very truly yours,

WILLIAM K. SUTER,
Clerk
By: Theresa A. Haslip
Assistant Clerk

Enc:
cc Ahmed T. Aziz, Esquire
(with copy of mandate to each)

SUPREME COURT OF THE UNITED STATES

No. 90-213

Louis A. LaRaia,

Petitioner,

v.

Pennsylvania

ON WRIT OF CERTIORARI to the Superior Court of Pennsylvania, Pittsburgh Office.

THIS CAUSE having been submitted on the petition for writ of certiorari and response thereto,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated with costs, and that this cause is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for further consideration in light of Powers v. Ohio, 499 U.S. ___ (1991).

IT IS FURTHER ORDERED that the petitioner, Louis A. LaRaia, recover from Pennsylvania Three Hundred Dollars ($300.00) for his costs herein expended.

April 22, 1991

Clerk costs: $300.00

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable the Judges of the Superior Court of Pennsylvania, Pittsburgh Office,

GREETINGS:

WHEREAS, lately in the Superior Court of Pennsylvania, Pittsburgh Office, there came before you a cause between Commonwealth of Pennsylvania and Louis A. LaRaia, Appellant, No. 1480, Pittsburgh 1987, wherein the judgment of the said Superior Court was duly entered on the twenty-second day of December, 1988, as appears by an inspection of the petition for a writ of certiorari.

AND WHEREAS, in the 1990 Term, the said cause having been submitted to the SUPREME COURT OF THE UNITED STATES on the said petition for writ of certiorari, and

the Court having granted the said petition.

ON CONSIDERATION WHEREOF, it was ordered and adjudged on April 22, 1991, by this Court that the judgment of the above court in this cause was vacated with costs, and that this cause is remanded to the Superior Court of Pennsylvania, Pittsburgh Office, for further consideration in light of Powers v. Ohio, 499 U.S. ___ (1991).

IT IS FURTHER ORDERED, that the petitioner, Louis A. LaRaia, recover from Pennsylvania Three Hundred Dollars ($300.00) for his costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice,

and the Constitution and Laws of the United States.

Witness the Honorable WILLIAM H. REHNQUIST, Chief Justice of the United States, the 23rd day of May, in the year of our Lord one thousand nine hundred and ninety-one.

Costs of Louis A. LaRaia:

Clerk's costs: $300.00

/s/
Clerk of the Supreme Court of the United States

90-213

Louis A. LaRaia

v.

Pennsylvania

IN THE SUPERIOR COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	No. 1480
v	:	Pittsburgh
	:	1987
Louis A. LaRaia, Appellant	:	

MOTION TO AMEND MOTION FOR REARGUMENT EN BANC AND PANEL RECONSIDERATION

Allen N. Brunwasser,
Esquire
Attorney for Appellant

P.O. Box 22212
Pittsburgh, PA 15222

(412) 391-0329

CERTIFICATION OF SERVICE

On the 1st day of July, 1991, copy hand delivered to office of District Attorney.

Allen N. Brunwasser

MOTION TO AMEND MOTION FOR REARGUMENT EN BANC AND FOR PANEL RECONSIDERATION

TO THE HONORABLE, THE PRESIDENT JUDGE AND THE ASSOCIATE JUDGES OF THE SUPERIOR COURT OF PENNSYLVANIA:

Louis A. LaRaia respectfully represents:

1. On June 4, 1991, he filed a Motion for Reargument en Banc and for Panel Reconsideration of the May 24, 1991 Order of Judge Johnson (who has been asked to recuse) and Senior Judge Brosky.

2. The main issue is the unconstitutional striking of Black Jurors by the Assistant District Attorney.

3. On Pages 4-5 of its May 24, 1991 Order, the Panel declares in Footnote 4:

"We assume that the Supreme Court directed this Court to reconsider this issue since the Trial Court responded to Appellant's claim by stating that,

"We believe that the Defendant's objection is that he was deprived of a

cross section of the community because of racial discrimination. This is absurd. The Defendant himself is White. Therefore, the Prosecutor did not exercise peremptory challenges to remove venire members of the Defendant's race." Trial Court Opinion, 7/6/87, at 3. The Trial Court also added that, "The Prosecutor did not even realize he had removed Black venire members as he did not look at the panel while exercising peremptory challenges. He only looked at the book [the papers containing information regarding the age, occupation, etc. of the venire persons]." Id. at 4."

4. On March 28, 1991, the Pennsylvania Supreme Court Blackwell v. Com. of Pa., State Ethics Committee, ___ Pa. ___, 589 A.2d 1094, 1099, advised that the law in force when a case is on appeal is applied to that case including "changes

in law which occurs before the judgment becomes final."

5. On May 28, 1991, the United States Supreme Court in Hernandex v. N.Y., ___ US ___, 111 S.Ct. 1859 again decided improper prosecutor use of peremptory challenges and advised if the Trial Judge makes a credibility finding, the appeals court gives it deference unless the finding is clearly erroneous (111 S.Ct. at 1869) or there are "exceptional circumstances which cause the appeals court to be "left with the definite and firm conviction that a mistake has been committed" (111 S.Ct. at 1871).

6. On May 20, 1991, the United States Supreme Court, in Lankford v. Idaho, ___ US ___, 111 S.Ct. 1723, 1730 said a decision should not be made until the losing party has an "opportunity to present his side of the story" (111 S.Ct.

at Note 22, Page 1733) and "comment on facts" and that a one sided decision will be reversed.

7. On May 28, 1991, the United States Supreme Court announced it intends to have its mandate enforced no matter how often the state court resists; Yates v. Evatt, ___ US ___, 111 S.Ct. 1884, 1890-1891 (3 certioraries to overcome error).

8. On April 30, 1991, the Superior Court of Pennsylvania in Houseknecht v. Walters, ___ Pa. Super. ___, 590 A.2d 20, 12 set aside the credibility finding of a Jury and affirmed Trial Court granting of a new trial because the record disclosed the verdict was against the weight of the evidence and the jury finding was inherently improbable".

9. The Trial Judge here appears to have rejected the race issue as absurd because Defendant was White and thus

decided on an issue of law which the United States Supreme Court reversed (111 S.Ct. at 1614).

10. Although Judge Kunselman does not say he believed the Prosecutor's statement that he did not look at the Jury to see that the two rejected Jurors were black, LaRaia will address the issue as though he had and ask the finding be rejected as improbable, contrary to the record, clearly erroneous and against the weight of the evidence.

A. After the Jury was seated, but before voir dire began, Assistant District Attorney David G. Joyce looked directly at the prospects as he stood in front of the Jury Box to address them and did address them.

B. There is no transcript of this because no court reporter was present.

C. Mr. LaRaia is attaching his

affidavit to this motion in support of this statement as is Trial Counsel Allen N. Brunwasser and observer Elaine J. Potts.

D. If these affidavits are not denied, LaRaia respectfully requests they be taken as true and made part of the record. If denied, he asks for a remand in order to hold an evidentiary hearing.

E. When Defendant objected to Mr. Joyce conducting the voir dire, asked the Trial Judge be present and a court stenographer take notes, only the steno-grapher was directed to appear and the other requests were denied (see trial transcript, Pages 270a-278a, attached).

F. When counsel returned from chambers to the courtroom, Mr. Joyce again stood in front of the Jury, looked at them and spoke to them (see 263a-266a, attached).

11. LaRaia respectfully urges this Court of Appeals to rule that Mr. Joyce could not look at the Jury, address them, respond to their questions and hear their answers and not notice that the two rejected Jurors were Black and that Mr. Joyce's contrary statement should be rejected as should the finding of the Trial Judge if he made such a finding.

12. In addition, LaRaia respectfully suggests no finding on the credibility of what Mr. Joyce said was made and, if it was, it is not supported by the record, contrary to the record, against the weight of the evidence and common sense and experience, clearly erroneous and that a mistake has been made.

WHEREFORE, Petitioner respectfully requests panel reconsideration, reargument en banc, respect for the clear mandate of

the United States Supreme Court and a new trial.

Respectfully submitted,

Allen N. Brunwasser
Attorney for Appellant

P.O. Box 22212
Pittsburgh, PA 15222

(412) 391-0329

AFFIDAVIT

Subject to penalties of 18 PS 4904, we and each of us swear that Assistant District Attorney David G. Joyce on January 12, 1987 looked directly at the proposed Jurors when he addressed them as disclosed in the attached testimony and further that he did so when he made his strikes and that what is said about this in Paragraph 10 of this Motion is true.

Louis A. LaRaia
Elaine J. Potts
Allen N. Brunwasser

P R O C E E D I N G S

(In Chambers)

THE COURT: This matter relates to the Commonwealth versus Louis A. LaRaia, No. 599 of 1986. Counsel has come into chambers indicating to the Court that they are about to select the jury for the trial of the case. Mr. Brunwasser has made two requests as I understand it. Number one, that the Court be physically present and ask the voir dire questions of the jury. Number two, that the stenographer be present to record the voir dire. Have I accurately stated your request?

MR. BRUNWASSER: Yes. And also, your Honor, that Mr. Joyce not be permitted to address the jury until the trial begins, and, of course, that everything that is said be recorded. I can't see any reason for Mr. Joyce to address the jury and tell them what the case is about.

That is for opening. And the questions that I want the Court to ask, if the Court would accede to my request, is that to name the parties, Louis LaRaia, Officer Phillis, Mr. Wilkinsin, Jr. and Mr. McClurg and ask the jury if they know any of those people and also if they have any reason why they cannot render a fair decision in this case and if they know anybody on the District Attorney's staff and that is it. I mean, those few questions couldn't take your Honor more than five minutes. I object to Mr. Joyce asking those questions because that gives him more of a position than he has now. It is not fair and it is hard to figure out how that subtle thing will be evaluated by the jury, meaning he is addressing the jury, I am not addressing the jury.

But, of course, I don't want to address the jury any more than I have to.

So this is an important case and as your Honor knows there has been a lot of heat on this case. I don't want to take a risk of not protecting Mr. LaRaia as best I believe I should and he has a right to ask me to protect him. If I may suggest, your Honor, the time we spent here in chambers, the jury could have been selected and the trial would have begun.

I realize I am a guest in Beaver County and I apologize if I am causing any problems. I don't want to just waive it when I do think it is important and I was frankly surprised when Mr. Joyce started addressing the jury. I have a very cordial relationship with Mr. Joyce. I don't want to have any problems. I intend not to.

Incidentally, I have noticed that two people who have participated as private counsel in this case are also

members of the District Attorney's staff. I believe Keith McMillen is a member of the law firm that is representing one or some of the defendants in the case before Judge Ziegler of the U.S. Court. Mr. Aziz represented an ex parte motion to your Honor releasing witnesses from my venue case is also on the staff of the District Attorney, and I am not going to evaluate what impact, but I have noticed that and things seem to be a little informal here and that may work, but once I notice it I am under professional obligation to raise it because otherwise I might be guilty of malpractice or disciplinary offenses myself.

So I humbly ask your Honor to please come out and say to the jury, "This case involves shooting a coon dog," because if the jury doesn't know what the case is about they couldn't give a reason why they

could not render an impartial decision. That is usually done, if counsel requests it, by the Court. This is a criminal case. Mr. LaRaia can get two years in prison. So I think that is pretty serious.

THE COURT: Mr. Joyce, in conducting the voir dire what did you intend to tell the jury about the case, the prospective jurors?

MR. JOYCE: Only, your Honor, that Mr. LaRaia is charged with the offense as indicated in the Information, cruelty to animals, the concerns and incident occurred in Hanover Township on November the 29th of 1985, ask them whether or not they have any knowledge of this case by way of any media publicity or otherwise and name the witnesses that we intend to present on the case.

MR. BRUNWASSER: That is usually

done by a clerk in our county, your Honor.

THE COURT: What is usually done in your county is not necessarily what is usually done in our county or other counties for that matter, Mr. Brunwasser. In our county the usual practice is voir dire is conducted by counsel for the parties. The trial judge is not personally present during the voir dire except in homicide cases, and I don't intend to deviate from that general practice in this case. So I am not going to be personally present.

MR. BRUNWASSER: Then I ask that a clerk --

THE COURT: I am available in chambers if in the event either counsel has an objection to a voir dire question put to the prospective jurors and I will rule on that objection.

MR. BRUNWASSER: May I ask that a

clerk then conduct the voir dire? That is done, I believe, all over the Commonwealth. I have practiced in fourteen different states and all over the Commonwealth and it is usually done by a clerk or by the judge. If the judge can delegate that type of a thing to a clerk but I do not believe the judge can delegate that to the District Attorney who is a party and so then as an alternative I ask your Honor to have a clerk do what Mr. Joyce said he is going to do. Then it is impartial.

THE COURT: Likewise, in our county it has been the practice for as long as I have been a member of the Bar and a member of the court that trial counsel conduct the voir dire, put the voir dire questions to the prospective jurors. We don't have a clerk doing that, as I understand occurs in Allegheny County. It has been the

practice here that in a criminal case the Commonwealth's attorney make a very brief reference to the facts so that jurors can be questioned as to whether or not they know anything about the case. I see no reason to deviate from that practice in this case.

MR. BRUNWASSER: Then I want to make the specific objection. I respectfully object to that procedure. I respectfully believe it is a violation of Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution and the First, Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution and I move for mistrial. There is no way to move for a mistrial. Since your Honor is going to allow that that go on, I am moving for a mistrial. That means if I am right and Mr. LaRaia is convicted, the whole thing will have to be tried all over again.

So I humbly ask your Honor just to have a clerk do it, even your bailiff. All he has to say is --

THE COURT: Do either you or Mr. Joyce have proposed voir dire questions prepared in writing to submit to the prospective jurors?

MR. JOYCE: I do not.

MR. BRUNWASSER: All I am saying, your Honor, is --

THE COURT: What would a clerk ask? The clerk knows nothing about the case.

MR. BRUNWASSER: He would say that this case involves a shooting of a coon dog in Hanover Township of November 29, 1985. Does anybody know anything about it? Secondly, the defendant in this case is Louis LaRaia of Hookstown Road. Does anybody know him? Third, the witnesses will be for the Commonwealth, Officer Robert Phillis, Mr. Wilkinson, giving his

whole name, and Mr. McClurg. Does anybody know these people? And the last question, has anyone ever been represented by any member of the District Attorney's staff? And that is all. Now that would take, your Honor, as long as -- It didn't take me more than two minutes to say it.

You have a right to run your county the way you want, but the Constitution of Pennsylvania and the United States supersedes that if it is raised and I wouldn't raise it if I didn't think it important because it gives Mr. Joyce an advantage no matter how you look at it. It gives him an advantage. He is sort of sitting as a judge. Say he asks a question --

THE COURT: The objection is over-ruled. The motion for mistrial is refused. I will authorize either counsel to ask any of the voir dire questions

which are appropriately put to the prospective jurors and instruct counsel to proceed. Now I will grant your request to have the stenographer present during the voir dire.

MR. BRUNWASSER: I would ask, Mr. Joyce, that you evaluate it on your own as a judicial officer what you should do under the circumstances. What they usually do, they call each juror up in U.S. Court. The judge sits and the judge asks the juror the questions. They have standard questions. In every U.S. District Court the judge is on the bench when the jury is selected and the lawyers in a civil case -- I have seen in some cases -- each individual juror comes up to counsel table and the clerk would ask each juror all these questions. I don't think that is necessary. I mean, I have no objection to everyone being asked those

questions en masse. But we are not allowed to ask any individual questions without a written request and an order by the Court, so if this was a civil case, the jury would come up to the table, nobody would be there, just the two lawyers. Nobody makes an opening address and the clerk says the questions that I have asked the Court to say.

I hope your Honor will forgive me. I can't see a reason in the world not to have a clerk do it except the reason this is the way we have always done it and we are going to continue to do it this way. Now maybe nobody from Beaver objects because if they do they have to face the Court. You see, the Court will say well, this fellow is giving us a lot of trouble so therefore on other matters that we would just go on with we are going to give back to him because what is fair is fair.

I have no contention with that.

If a fellow causes trouble and he comes over and he is vulnerable for trouble, he should get it. But something like this is so fundamental to the system of criminal justice. I suggest that your Honor shouldn't evaluate it on the basis that this is the way we have always done it and this is the way we are going to continue to do it. The books are filled with cases where results were reversed and everybody's time was wasted just because of that kind of thinking.

THE COURT: I have made my ruling. Now counsel will proceed with jury selection.

MR. BRUNWASSER: All right, your Honor. Thank you.

(Whereupon, the following in chambers discussion was held after the jury selection)

MR. BRUNWASSER: If your Honor

please, the first 12 jurors, among them were two black ladies. Both of them were eliminated by my colleague, Mr. Joyce. Your Honor may or may not be aware, I believe

PROCEEDINGS

MR. JOYCE: As I said, Ladies and Gentlemen, my name is David Joyce and I am an Assistant District Attorney in this county. The case that we are going to try is the case of the Commonwealth versus Louis A. LaRaia. He is sitting behind his attorney and has the beard on. Incidentally, his attorney is Mr. Allen Brunwasser from Allegheny County.

First of all, does anybody here know either Mr. LaRaia or Mr. Brunwasser?

Now, in the course of the case the Commonwealth is going to present three witnesses and those witnesses are Mr. Fred C. Wilkinson who lives on Ziegler Road in Rochester, Pennsylvania; Mr. James G. McClurg who lives out in Hanover Township; Officer Robert Phillis of the Hanover Township Police Department. Does anybody know any of those individuals?

Now, this case concerns an incident which the Commonwealth alleges took place on November 29th, 1985 in which a dog was killed. The dog was owned by Mr. McClurg. Does anybody know anything about the case, anybody heard anything about the case?

Okay. Thank you.

Mr. Brunwasser has asked that I ask you an additional question which is whether or not any of you folks have been represented by any other members of the District Attorney's staff and I will read those names that are presently on the staff: Edward J. Tocci, Clarence D. Neish, Anthony J. Berosh, John Lee Brown, Jr., Frank S. Kelker, Keith R. McMillen, John A. Palmieri, Peter P. Simoni, Theresa Ferris-Dukovich, Dale M. Fouse, myself, of course, and Myron Sainovich.

Yes, ma'am?

THE JUROR: Represented in what way?

MR. BRUNWASSER: By having any of those individuals do any legal work for you.

MR. JOYCE: Yes.

MR. BRUNWASSER: All right. Both of you? What is your number?

THE JUROR: 35.

MR. JOYCE: You are Mrs. Jones?

THE JUROR: That's right.

MR. JOYCE: And Mrs. Stitler?

THE JUROR: Yes.

MR. JOYCE: Mrs. Jones, who represented you?

THE JUROR: Mr. Kelker.

MR. JOYCE: And Mrs. Stitler?

THE JUROR: Mr. Palmieri.

MR. JOYCE: And somebody else? Yes, ma'am?

THE JUROR: Mr. Kelker was at one time solicitor for my township and had connection with me in that way.

MR. JOYCE: So any contact would have been on behalf of or through the township rather than individually?

THE JUROR: Yes, sir.

MR. JOYCE: Okay. Anybody else? Yes, sir?

THE JUROR: How about school district solicitor?

MR. JOYCE: That would be the same thing. What school district do you live in?

THE JUROR: Center -- Mr. Palmieri.

MR. BRUNWASSER: What number?

THE JUROR: 97.

MR. JOYCE: Anybody else? Okay.

THE CLERK: The following jurors have been excused: No. 82, William J. Sullivan; No. 4, Jean C. Black; No. 10, Carol A. Cindrich; No. 30, Alice Hilt.

The following jurors have been

selected: No. 24, Gary Gilarno; No. 89, Ronald S. Venneri, Sr.; No. 83, Robert P. Sutton; No. 93, Margaret Weber; No. 67, Robert C. Roland; No. 78, Helen B. Staley; No. 1, Robert E. Allison; No. 55, Alfred S. Oleksa; No. 72, Lawrence H. Sheets; No. 97, Nicholas J. Yewcic; No. 63, David J. Richard; No. 71, Norah Jean Shane.

(Whereupon, the remaining jurors leave the courtroom).

IN THE SUPERIOR COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	No. 1480
v	:	Pittsburgh
	:	1987
Louis A. LaRaia, Appellant	:	

SECOND MOTION TO AMEND MOTION FOR REARGUMENT EN BANC AND FOR PANEL RECONSIDERATION

Allen N. Brunwasser, Esquire
Attorney for Appellant

P.O. Box 22212
Pittsburgh, PA 15222

(412) 391-0329

CERTIFICATION OF SERVICE

On the 15th day of July, 1991, copy hand delivered to office of District Attorney.

Allen N. Brunwasser

Received JUL 15, 1991

SUPERIOR COURT
PITTSBURGH OFFICE

SECOND MOTION TO AMEND MOTION FOR REARGUMENT EN BANC AND FOR PANEL RECONSIDERATION

TO THE HONORABLE, THE PRESIDENT JUDGE AND THE ASSOCIATE JUDGES OF THE SUPERIOR COURT OF PENNSYLVANIA:

Louis A. LaRaia respectfully represents:

1. Appellant wants to make certain the court is aware that the Jury strike issue which Judges Brosky and Johnson say was waived was actually addressed and rejected on the merits in their December 22, 1988 Opinion in #1480 Pgh 87 in Part VIII where the issue was stated as "Does a jury selection in which -- all blacks are removed -- deprive defendant of his state and federal right to be tried by a fair cross-section of the community?" and rejected as "These claims are without merit".

2. Appellant respectfully brings to this court's attention that if relief is

denied here, the chance of Supreme Court of Pennsylvania Review is practically zilch (see 590 A.2d Advance Sheets, Pages 294-299; 1 allocatur granted in 73 criminal cases; 3 granted in 38 civil cases) and he will be required to again ask the United Stats Supreme Court for certiorari or/and mandamus enforcement of their order of April 22, 1991, a procedure which he, as a Conrail track laborer, cannot afford.

Respectfully Submitted,

Allen N. Brunwasser
Attorney for Appellant

P.O. Box 22212
Pittsburgh, PA 15222

(412) 391-0329

IN THE SUPERIOR COURT OF PENNSYLVANIA

Com. of Pennsylvania	:	Received
	:	JUN 4,
	:	1991
	:	
	:	No. 1480
v	:	Pittsburgh
	:	1987
Louis A. LaRaia, Appellant	:	
	:	Superior
	:	Court,
	:	Pittsburgh
	:	Office

MOTION TO RECUSE JUDGE JUSTIN M. JOHNSON

AFFIDAVIT

Under penalty of 18 PS 4904.

1. The distinguished Judge Justin M. Johnson is well aware of the facts and circumstances which preclude him sitting in judgment of any client represented by Allen N. Brunwasser, Esquire.

2. These cases include the unsuccessful criminal proceedings brought by then City of Pittsburgh School Solicitor Johnson, the Law Shiring Civil Rights Case lost before the late Judge Wessel and what

then Assistant School Solicitor Johnson said and the answers he received, the disciplinary case which ended with Attorney Johnson being directed by the Disciplinary Board to stop representing he was practicing law with his brother when his brother was a sitting Judge and to remove phone book and door representations etc conveying this idea, the taking a raise as School Board Solicitor on the promise not to practice law and then continuing to practice law and Brunwasser's termination of this protest at the request of a friend (who was also a former Judge) from a Major Pittsburgh Law Firm and objections presented in the estate of Oliver Johnson.

3. If Judge Johnson wants more detail, Brunwasser will furnish them upon request.

4. Affiant, if required, will also

raise the propriety of Judge Johnson's on Election Board published improper political contribution to then candidate and Judge Cynthia Baldwin, his acceptance of an Honorary degree from a local college and his sitting on the boards of various corporations and entities.

5. Under the present Superior Court Rules, an appellant is not allowed to know the identity of the panel members until the day of argument and thus has no opportunity to object to any Judge on the panel.

Wherefore, appellant respectfully moves Judge Justin M. Johnson recuse especially since a previous Motion has already been made in this case.

Allen N. Brunwasser
5-30-91

MOTION FOR ORAL ARGUMENT

TO THE HONORABLE, the President Judge and the Associate Judges of the Superior Court of Pennsylvania:

1. Appellant respectfully requests oral argument so he can point out and make certain the panel is aware of the record misapprehensions made in the 5-24-91 opinion and, if the panel affirms, asks oral argument before the court en banc.

2. The need for oral argument is justified by the errors appellant has presented in his Motion for Reargument and Reconsiderations.

3. With the election defeat of Judge Melinson and requested recusal of Judge Johnson, appellant questions whether a panel exists to hear this case and suggests decision should be made en banc as the last order was denial of en banc consideration.

Wherefore, oral argument is requested before the panel (which now should include only Judge Brosky and, if he affirms, before the court en banc).

Respectfully submitted,

Allen N. Brunwasser
Attorney for Appellant

CERTIFICATION OF SERVICE

On the 5th day of June, 1991, copy hand delivered to Office of District Attorney.

Allen N. Brunwasser

July 18, 1991

Judge John G. Brosky
and
Judge Justin M. Johnson

In re LaRaia v. Com., $1480 Pgh 87:

1. Will Your Honors please read In Re Sanford Fork and Tool Co., 1895, 160 US 247, 256, 16 S. Ct. 291, 293.

2. This case was applied to a state court in General Atomic Co. v. Felter, 1978, 436 US 493, 497, 98 S. Ct. at 1941.

3. A copy of this letter will be mailed to the Beaver County District Attorney today.

Respectfully Submitted,

Allen N. Brunwasser
Attorney for Louis A. LaRaia

August 2, 1991

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

IN RE: COMMONWEALTH OF PENNSYLVANIA
V. LOUIS LaRAIA
NO. 1480 PITTSBURGH, 1987

Dear Mr. Brunwasser:

The Court has entered the following Order in regard to your Application For Reargument filed in the above-captioned matter:

"ORDER OF COURT

The court hereby denies the application filed June 4, 1991, requesting reargument or reconsideration of the decision dated May 24, 1991. All other motions are denied.

PER CURIAM"

Received
JUL 19, 1991
Superior Court
Pittsburgh Office

DATE: August 2, 1991

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV:bbc
cc: Ahmed T. Aziz, Esquire
Honorable Robert E. Kunzelman

NO. 466 W.D. ALLOCATUR DOCKET 1991

IN THE SUPREME COURT OF PENNSYLVANIA

NO.

COMMONWEALTH OF PA	:	FILED
	:	SEP 3, 1991
Petitioner,	:	Supreme Court
	:	Western District
vs.	:	
	:	
LOUIS A. LaRAIA,	:	
	:	
Respondent.	:	

PETITION FOR ALLOWANCE OF APPEAL FROM THE AUGUST 2, 1991 ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA WHICH REFUSED REARGUMENT EN BANC OR PANEL REARGUMENT FROM THE MAY 24, 1991 ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA AT NO. 1480 PGH 1987 WHICH ORDER REFUSED TO OBEY THE APRIL 22, 1991 ORDER AND THE MAY 23, 1991 MANDATE OF THE SUPREME COURT OF THE UNITED STATES AT #90-213

Petition Denied
Per Curiam
1/8/92

RECEIVED
JAN 10, 1992
SUPREME COURT
WESTERN DISTRICT

ALLEN N. BRUNWASSER
ATTORNEY FOR PETITIONER

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CERTIFICATION OF SERVICE

On the 19 day of August, 1991, copy hand delivered to office of District Attorney of Beaver County, Pennsylvania.

Allen N. Brunwasser